

RICHARD BINGHAM, Plaintiff in Error, vs. JOSE B. OLIVER, Defendant in Error.

1 LLR 47 (1870) (1 January 1870)

[January Term, A. D. 1870.]

Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.

General issue—Special Plea—Lease to aliens—Ejectment.

1. Where a special plea is pleaded the defendant is not allowed to argue points of law raised in the general issue, but must confine himself to the defense set up in the special plea.
2. A contract made with an alien for the lease of land granted a settler under the Immigrant Allotment Act before title to same has been perfected, is void.
3. Plaintiffs in ejectment must recover upon the strength of their own title and not upon the weakness of the defendant's title.
4. A lease to an alien for ninety-nine years is an evasion of the prohibition of the Constitution and therefore unconstitutional. A lease of land to an alien for a term more than twenty years is against the Constitution and public policy, and is therefore void.

It is the opinion of this court that the court below erred in allowing the plaintiff in error to plead the law points that were raised in the general issue and not to rely on his special plea. When the general issue is waived, all the law advantages involved in it are also waived but the one relied on; and the party is therefore compelled to rely on his special plea to sustain his position. A contract made with an alien for the lease of lands apportioned to a settler is in violation of a prohibitory clause of the statute of this Republic which in positive language declares that no bargain, transfer, sale, deed or lease of lands by or with the grantee of lands for the same, before a legal and complete title in fee simple has been obtained, shall be valid or lawful.

The transaction which took place between plaintiff in error, and on which this law is brought to bear, is peculiar,—no doubt if all reports of cases in the world were searched, you would not find a similar one. In this case the plaintiff in error has drawn a town lot in the city of Greenville, Sinoe County, and before he made the necessary improvements required by law to entitle him to a deed in fee simple, he contracted with the defendant in error to lease to him, the defendant in error, in consideration of forty-five dollars paid to the said plaintiff in error for the lease of the said lot of land No. 1202, for the term of ninety-nine years; and in order that the said plaintiff in error should be made competent to transfer the said lot of land to him, the said defendant in error, he, the said defendant in error, promised and did make the improvements required by the statute respecting the improvements of the land, by which the said plaintiff in error obtained a deed in fee simple from the government. This being done, the plaintiff in error (as alleged) having refused to comply with his part of the contract, the defendant in error brought this action of ejectment in the court below, to which the plaintiff in error pleaded in defense the statute prohibiting all bargains, transfers, deeds or leases, before a legal and complete deed in fee simple had been obtained. The defendant having obtained a judgment in the court below, the case on a writ of error is before this court to be decided.

The statute is plain, and needs but little said by this court by way of interpretation thereof. However, as duty makes it incumbent upon me, I proceed to do so. The bargain made between plaintiff in error and defendant in error is void, and the plaintiff in error is not bound by it. The bargain, however, being unlawful as it relates to both parties, the deed which is the offspring, or in other words the resultant of the said bargain,

vitiates itself. Therefore, the plaintiff in error does not acquire a legal and complete "title" to the said lot No. 1202, by said deed thus obtained. The plaintiff in error being imperfectly in possession of the said lot, however, the improvement made thereon passes imperfectly with the said lot of land, because in an action of ejectment the plaintiff must recover upon the strength of his own title and not upon the weakness of the defendant's title.

The next point to which the plaintiff in error resorted for his defense, is that an alien cannot hold real estate either by lease or otherwise under the Constitution of the Republic of Liberia. To hold real estate under the authority of the Constitution of Liberia means to be absolutely possessed of lands in Liberia ; hence, to have the exclusive right to it, and to disposing of the same. A lease held under the Constitution with respect to aliens in treaty stipulations with Liberia extends to mere chattel right; that is, the lessee can only hold the right of the use of the land and tenement. But he cannot bring an action of ejectment for lands, although he may be ejected any time after a year's notice had been given him to move off any land rented or leased by him. Notwithstanding an alien cannot bring an action of ejectment for lands, yet he may recover damages for any injury sustained by reason of the violation of any contract for the use of the land.

A lease of land to an alien for ninety-nine years is an evasion of the prohibition of the Constitution, and it is therefore unconstitutional. To constitute a good lease the term should not exceed twenty years, and the rent should accrue to the lessor annually. The lease of land to an alien for more than twenty years is against the Constitution and public policy, and therefore is void. For the Constitution prohibits an alien from even an imaginary claim to land, and therefore the law will not give aid to it, however much it may be disguised. If a wife join with her husband in a deed, her separate estate, as well as her husband's, will become liable for the warranty, because deeds and other writings are evidence against all parties to them. Therefore a wife may not join in a deed with her husband, since the letter and spirit of the Constitution is to keep their property separate and distinct, so far as the rights of the wife are concerned. Therefore to recover lands wrongfully detained, unless the liability of the wife to the plaintiff is clearly defined, either by law or set out in the deed, it is not necessary that the action be brought against the husband and wife jointly.

Therefore, the court adjudges that the judgment of the lower court be reversed, and that the original deed for the land, lot No. 1202, as described in the complaint of said defendant in error, is hereby vitiated and made void and of no effect; and as the plaintiff in error is in the imperfect possession of the said lot No. 1202 in the city of Greenville, all and singular the buildings and improvements on said lot passes and follows the imperfect possession of the said plaintiff in error; and that the defendant in error pay all costs incurred since the appeal had been taken.

Key Description: Aliens, Immigration, and Citizenship (Constitutional restriction of rights as to real property)